

AG Contract No. KR04-1797TRN
ADOT ECS File No.: JPA 03-103
Project: TEA-FLO-0- (002) A
TRACS No. SL477 01C
Section: Phase II Rehabilitation
Silver King Historic Hotel
BUDGET SOURCE ITEM No.: _____

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
TOWN OF FLORENCE

THIS AGREEMENT is entered into February 9, 2005, pursuant to Arizona Revised Statutes, § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and TOWN OF FLORENCE, acting by and through its MAYOR and TOWN COUNCIL (the "Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-334 and 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

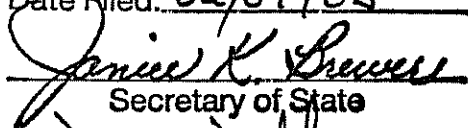
2. The Town is empowered by Arizona Revised Statutes § 9-240 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.

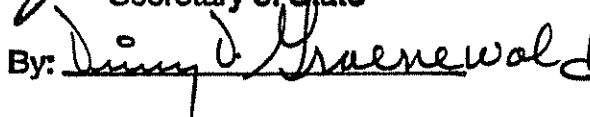
3. The interest of the State for this Project is in the acquisition of Federal funds for the use and benefit of the Town and is authorized as the designated agent. Funds expended for the Project, are authorized by reason of Federal Law and regulations.

4. Such Project lies within the boundary of the Town and has been selected by the Town; the survey of the project has been completed; and the plans, estimates and specifications will be prepared and as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.

5. The Town, in order to obtain Federal funds for the design and construction of the project, is willing to provide Town funds to match Federal funds in the ratio required or as finally fixed and determined by the Town, State and FHWA, including actual construction engineering (CE) and administration costs.

6. The work embraced in this Agreement is for the continued rehabilitation of the Silver King Hotel in Florence, Arizona. The rehabilitation of the Silver King Hotel Phase II, hereinafter referred to as the "Project", includes but is not limited to: reconstruction of an exterior upstairs veranda, construction of interior framing, finishing ceiling, walls and floors (2nd floor), plumbing, electrical including cooling and heating needs, and making the building ADA compliant. The Town will be responsible for design, bidding, construction administration, maintenance, electrical power, and water connections to the Project. The estimated costs are as follows:

NO. 27365
Filed with the Secretary of State
Date Filed: 02/09/05

Secretary of State

By: 

Design TRACS No. SL477 02D

Estimated Design Cost	\$ 55,000.00
Federal Aid Funds @ 94.3%	\$ 51,865.00
Estimated Town Funds @ 5.7%	\$ 3,135.00

Construction TRACS No. SL477 01C

Estimated Construction Cost (incl. 15% CE cost)	\$ 473,500.00
Federal Aid Funds @ 94.3%	\$ 446,510.00
Estimated Town Funds @ 5.7%	\$ 26,990.00
Total Estimated Design & Construction	\$528,500.00

*(Includes; construction engineering and construction administration, and incidentals)

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Agree to be the Town's authorized agent for the acquisition of Federal Funds and submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for construction and funding. Should costs exceed the maximum Federal funds available, it is understood and agreed that the Town will be responsible for any overage.

b. Approve the Project if such project construction funds are available by FHWA for construction of the Project. The State and FHWA hereby designate the Town to self-administer the Project.

c. Upon execution of this Agreement, make payments to the Town up to the maximum not to exceed the federal aid funds shown for the direct actual cost of the design and construction of the Project, plus construction engineering, after receipt and approval of a reimbursement request, up to the Federal Aid funds that are available for the Project.

d. Not be obligated to maintain said Project, should the Town fail to budget or provide for perpetual and proper maintenance as set forth in this Agreement.

2. The Town will:

a. With the aid and consent of the FHWA and the State using Arizona Procurement Procedures, proceed to design, advertise for, receive and open bids, subject to the concurrence of FHWA and the State. Enter into contract(s) with a firm(s) to whom the award is made for the construction of the Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions and Standard Specifications at the lowest bid price.

b. Reimburse ADOT and the FHWA for all federally funded design expenses incurred, if the project does not advance to construction.

c. Provide personnel to administer and supervise construction. All construction Project change orders are to be copied to the State. The FHWA will participate in the construction administration cost provided by the Town up to 15% of the construction cost. Construction administration costs not participated in by FHWA shall be borne by the Town.

d. Consent to any inspections performed by the State, provide records or audit any books of the Town in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and the Federal Government.

e. Upon execution of this Agreement, invoice the State for the estimated 94.3% Federal aid for design, construction and construction administration costs addressed under this Agreement. The Town is entirely responsible for all cost incurred in performing and accomplishing the work as set forth in this Agreement whether covered by Federal funding or not.

f. Upon completion of the Project, provide for at its own costs and as an annual item in its budget, perpetual and proper maintenance to the Silver King Hotel and all enhancement improvements, including but not limited to; water services and electrical power, all at the Town's expense.

g. The Town shall ensure that all of the Federal aid funds are spent on portions of the Project that will be open to the public, free of charge, during normal business hours. No federal funds shall be used for any portion of the Project that is not open to the public.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement or for any resulting construction project. The Town, in regard to the Town's relationship with the State only, assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, the construction of the improvements contemplated, cost over-runs and construction claims. The Town will require its contractor(s) to name the State and ADOT as an additional insured in the contractor(s) insurance policies. The Town will also require its contractor(s) to name the State and ADOT as an additional indemnitee in the Town's contracts with its contractor(s). It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the Town and that to the extent permitted by law, the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance or negligent performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. The cost of the construction and construction engineering work covered by this Agreement is to be borne by FHWA and the Town, each in the proportion described or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, Town agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal aid received.

3. This Agreement shall remain in full force and effect until completion of the work; provided, however that any provisions in this Agreement for electrical power, water and maintenance shall be perpetual, unless assumed by another governmental entity.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 pertaining to State audit are applicable to this contract. In the event of such an audit, the Town will bear all costs associated therewith.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4

issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue - 616E
Phoenix, AZ 85007

Town of Florence
Nancy Mager, Grants Coordinator
775 North Main Street
Florence, AZ 85232

11. Pursuant to Arizona revised Statutes § 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

TOWN OF FLORENCE

STATE OF ARIZONA

Department of Transportation

By



TOM J. RANKIN
Mayor

By


SUSAN TELLEZ
Contract Administrator

ATTEST:

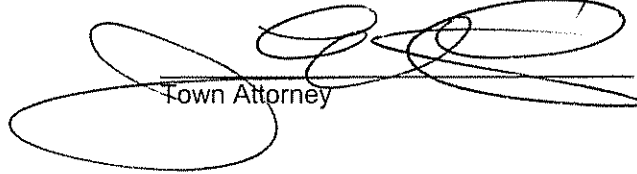
By


LISA GARCIA
Town Clerk

APPROVAL OF THE TOWN OF FLORENCE

I have reviewed the above referenced proposed Intergovernmental Agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, and THE TOWN OF FLORENCE and declare this Agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 11 day of January, 2005.


Town Attorney

THE TOWN OF FLORENCE

RESOLUTION NO. 909-05

RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FLORENCE, PINAL COUNTY, AUTHORIZING THE MAYOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR REHABILITATION OF THE HISTORIC SILVER KING HOTEL

WHEREAS, the Town of Florence has received a grant from the Arizona Department of Transportation/Transportation Enhancement Program in the amount of \$500,000; and

WHEREAS, this grant will provide for improvements including but not limited to: reconstruction of an exterior upstairs veranda, construction of interior framing, finishing ceiling, walls and floors (2nd floor), plumbing, electrical including HVAC and complying with ADA requirements; and

WHEREAS, it is necessary for an intergovernmental agreement between the Town of Florence and the Arizona Department of Transportation in order for actual project costs to occur; and

WHEREAS, the Agreement must be formally adopted by the Town Council.

NOW, THEREFORE, BE IT RESOLVED that the Mayor of the Town of Florence is hereby authorized to execute the intergovernmental agreement with the Arizona Department of Transportation, a copy of which is attached hereto as Exhibit A.

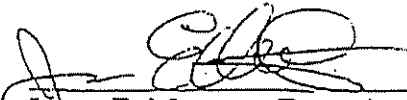
PASSED AND ADOPTED on this the 18th day of January, 2005.


Tom J. Rankin, Mayor

ATTEST:


Lisa Garcia, Town Clerk

APPROVED AS TO FORM:


James E. Mannato, Town Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-1797TRN (**JPA 03-103**), an Agreement between public agencies (i.e., The State of Arizona and Town of Florence), has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: February 2, 2005

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis".

Susan E. Davis
Assistant Attorney General
Transportation Section